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Item 7 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Report of the Compliance Committee on compliance by Turkmenistan*

Summary

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

* The present document is being issued without formal editing.



I. Introduction

1. Through paragraph 19 of its decision VI/8 on compliance¹ adopted at its sixth session (Budva, Montenegro, 11–13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) requested the Committee, pursuant to paragraph 13 (b) of the annex to decision I/7,² to review the compliance of Turkmenistan with articles 3 (1), (4) and (9) of the Convention in the light of the amendments to the Law of Public Associations of 4 February 2017 with respect to the possibilities for foreign citizens and persons without citizenship to found and participate in non-governmental organizations promoting environmental protection.

II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12–15 March 2018), the Committee reviewed the implementation of request ACCC/M/2017/2 (Turkmenistan) in open session with the participation of representatives of the Party concerned in person. Though invited, neither the communicant of communication ACCC/C/2004/5 nor registered observers took part in the session. The Chair informed the Party concerned that, following the meeting, a letter would be sent with questions for its reply by 1 October 2018.

3. On 5 September 2018, the secretariat sent a letter from the ECE Executive Secretary enclosing questions from the Committee to the Party concerned, with questions 1–6 to be answered by 1 October 2018, and questions 7–22 to be answered by 1 December 2018.

4. On 1 October 2018, the Party concerned submitted its replies to questions 1, 3, 5 and 6 of the Committee on time. It indicated that its replies to questions 2 and 4 would be submitted by 1 December 2018, together with its replies to the remaining questions.

5. On 5 October 2018, the secretariat forwarded the replies to questions 1, 3, 5 and 6 to the communicant of communication ACCC/C/2004/5 and registered observers, inviting their comments by 1 November 2018. No comments were received.

6. On 7 December 2018, the Party concerned submitted additional information explaining *inter alia* that it was not able to provide its answer to the remaining questions by the deadline of 1 December 2018 and requesting an extension for its reply to these questions. It also expressed concern about a possible misunderstanding by the Committee regarding its compliance with the Convention. It called upon the Committee to carefully consider its comments of 24 August 2017, submitted in the context of decision V/9I.

7. On 21 December 2018, the secretariat informed the Party concerned that the Chair had agreed to extend the deadline for its reply to the remaining questions to 11 January 2019.

8. On 17 January 2019, the Party concerned submitted an update on the steps it was taking to prepare its replies to the Committee's remaining questions.

9. On 19 February 2019, the Party concerned submitted its answers to questions 2 and 4 and resubmitted answers to questions 1, 3, 5 and 6.

10. After taking into account the information received by that date the Committee prepared its first progress review and adopted it at its virtual meeting on 21 February 2019. As of the date of the adoption of the first progress review, the Party concerned had not yet provided its replies to questions 7–22 of the Committee's questions dated 5 September 2018.

11. On 8 March 2019, the UNECE Executive Secretary wrote to the Deputy Chairman of the Cabinet of Ministers and Minister for Foreign Affairs of the Party concerned at the request of the Committee enclosing the Committee's first progress review.

¹ ECE/MP.PP/2/Add.8.

² ECE/MP.PP/2017/2/Add.1.

12. At its sixty-third meeting (Geneva, 11–15 March 2019), the Committee reviewed the implementation of request ACCC/M/2017/2 (Turkmenistan) in open session with the participation of a representative of the Party concerned in person. Though invited, neither the communicant of communication ACCC/C/2004/5 nor registered observers took part in the session.
13. On 15 March 2019, the Party concerned submitted an update.
14. On 25 April 2019, the Party concerned submitted its replies to questions 7–22 of the Committee’s questions of 5 September 2018.
15. On 29 May 2019, the secretariat invited the communicant of communication ACCC/C/2004/5 and registered observers to comment on the replies by the Party concerned to questions 7–22. No comments were received.
16. After taking into account the replies of the Party concerned to questions 7–22 of the Committee’s questions of 5 September 2018, the Committee prepared a supplementary first progress review and adopted it through its electronic decision-making procedure on 16 August 2019. The Committee thereafter requested the UNECE Executive Secretary to forward the supplementary first progress review to the Party concerned and the communicant of communication ACCC/C/2004/5 and registered observers.
17. On 27 August 2019, the UNECE Executive Secretary wrote to the Deputy Chairman of the Cabinet of Ministers and Minister for Foreign Affairs of the Party concerned enclosing the Committee’s supplementary first progress review, and inviting the Party concerned to provide a second progress report by 1 October 2019 on the implementation of paragraph 19 of decision VI/8.
18. The Party concerned failed to provide its second progress report by 1 October 2019.
19. On 20 November 2019, the secretariat informed the State Committee on Environmental Protection and Land Resources of the Party concerned that, since the Party concerned had failed to provide its second progress report on 1 October 2019 as requested, in order that the Committee could still take into consideration any measures the Party concerned had by then taken to implement paragraph 19 of decision VI/8, the Committee had requested that the Party concerned submit its second progress report as a matter of urgency, and by Tuesday, 10 December 2019 at the latest.
20. On 24 December 2019, the Party concerned provided its second progress report in reply to the letter of the UNECE Executive Secretary dated 27 August 2019.
21. After taking into account the information received, the Committee prepared its second progress review and adopted it on 2 March 2020. On the same date, the second progress review was sent to the Party concerned, the communicant and observers.
22. At its sixty-sixth meeting (Geneva, 9–13 March 2020), the Committee reviewed the implementation of request ACCC/M/2017/2 in open session with the participation via audio conference of representatives of the Party concerned and observer Earthjustice on behalf of the European EcoForum. Though invited, the communicant of communication ACCC/C/2004/5 did not take part in the session.
23. On 12 April 2021, the secretariat, on the Committee’s instructions, sent an email to the Party concerned requesting it provide its final progress report as soon as possible and by 30 April 2021 at the latest.
24. On 21 May 2021, the Party concerned submitted its final progress report, due on 1 October 2020.
25. On 26 May 2021, the Party concerned final progress report was forwarded to the communicant of communication ACCC/C/2004/5 and registered observers for their respective comments.
26. On 7 June 2021, the communicant of communication ACCC/C/2004/5 submitted comments on the Party concerned’s final progress report.
27. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement request ACCC/M/2017/2

through its electronic decision-making procedure on 4 July 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on 5 July 2021 to the Party concerned, the communicant and registered observers with an invitation to provide comments by 19 July 2021.

28. Comments on the Committee's draft report was received from the communicant of communication ACCC/C/2004/5 on 5 July 2021.

29. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of request ACCC/M/2017/2 in open session with the participation via virtual means of representatives of the Party concerned, the communicant of communication ACCC/C/2004/5 and Earthjustice as an observer.

30. After taking into account the information received, the Committee finalized and adopted its report to the seventh session of the Meeting of the Parties on the implementation of request ACCC/M/2017/2 through its electronic decision-making procedure on 20 July 2021 and thereafter requested the secretariat to send it to the Party concerned, the communicant and observers.

III. Considerations and evaluation by the Committee

31. In order to fulfil request ACCC/M/2017/2 of the Meeting of the Parties, the Party concerned would need to provide the Committee with evidence that it complies with article 3 (1), (4) and (9) of the Convention in the light of the amendments to the 2014 Act of Public Associations of 4 February 2017 with respect to the possibilities for foreign citizens and persons without citizenship to found and participate in non-governmental organizations promoting environmental protection.

32. The Committee recalls its conclusions in its supplementary first progress review of 16 August 2019, in which it stated that:

in light of the deletion of article 4 (2) and the insertion of the words 'of Turkmenistan' after 'citizens' in articles 1 and 3 (1) of the 2014 Act of Public Associations, and lacking any evidence that these amendments have not in practice affected the rights of foreign citizens and persons without citizenship to found and participate in nongovernmental organizations promoting environmental protection, the Committee finds that the Party concerned has not demonstrated that it complies with article 3 (9) of the Convention.

...

In addition, in the light of the ongoing lack of clarity as to how the prohibition on activities of unregistered associations set out in article 7 (2) of the 2014 Act on Public Associations is to be applied in practice, the Committee finds that the Party concerned has not demonstrated that it complies with article 3 (4) of the Convention.

Finally, in the light of the Committee's findings ... above, the Committee finds that Turkmenistan has not demonstrated that it complies with the obligation in article 3 (1) of the Convention to provide a clear, transparent and consistent framework to implement the provisions of article 3 (4) and (9) of the Convention.³

33. In its supplementary first progress review,⁴ and in its second progress review,⁵ the Committee invited the Party concerned to take the necessary legislative, regulatory and other measures to:

(a) Ensure that its legal framework explicitly sets out that foreign citizens and persons without citizenship have the same right to found and participate in nongovernmental organizations promoting environmental protection as do citizens of Turkmenistan;

³ Committee's supplementary first progress review, 16 August 2019, paras. 62–64.

⁴ Ibid., para. 65.

⁵ Committee's second progress review, 2 March 2020, para. 35.

(b) Ensure that its legal framework makes clear that members of the public who decide to come together to exercise their rights under article 9 (2) of the Law on Nature Protection, for example, to undertake environmental rehabilitation activities or to take part in demonstrations on nature protection issues and, in doing so, choose to identify themselves by a common name, would not be considered as acting as an “unregistered public association” and thus have their activities prohibited under article 7, paragraph 2, of the 2014 Act on Public Associations.⁶

34. In its second progress review, the Committee also invited the Party concerned to provide, as a matter of urgency, the text of all draft legislative measures through which the Party concerned proposes to address paragraph 33 (a) and (b) above, together with an English translation thereof and the envisaged timeframe by when the draft legislative measures will be adopted.⁷ The Committee additionally invited the Party concerned to provide by 1 October 2020, a final progress report on the measures taken by that date to address paragraph 33 (a) and (b) above, including the text of all legislative measures it adopted by that date to that end.⁸

General observations

35. The Committee expresses its disappointment that the final progress report was submitted only on 21 May 2021, nearly eight months after the 1 October 2020 deadline. The Committee notes that the failure by the Party concerned to engage with the Committee in a timely manner has been a recurring feature during the intersessional period. For example, the Party concerned provided its replies to question 2 and 4 of the Committee’s questions of 5 September 2018 on 19 February 2019, considerably later than the already extended deadline of 11 January 2019. Likewise, the Party concerned submitted its second progress report on 24 December 2019, more than two months after the deadline of 1 October 2019. The Committee considers that the failure by the Party concerned to respect the above deadlines is indicative of its generally low level of engagement in the Committee’s procedure. The Committee stresses the importance of engaging with the Committee in a timely manner in order that the Committee can assist the Party concerned to come into full compliance as soon as possible.

Article 3 (9)

36. The Committee recalls that, on 25 March 2019, and 24 December 2019, the Party concerned acknowledged that the additions and amendments that had entered into force on 4 February 2017 led to certain contradictions with other provisions of the 2014 Act on Public Associations.⁹ More specifically, the Party concerned acknowledged that the addition of the words “of Turkmenistan” to the words “citizens” in articles 1, 3 and 16 (2) of the Act led to some contradictions with articles 4 (1), 6 (1), 7 (1), 8 (3), 11 (1), 11 (5) and 13 (2), of that Act which refer to “citizens” and “natural persons”.¹⁰ The Party concerned reported that steps were being undertaken to prepare a draft law to further amend and supplement the 2014 Act on Public Associations.¹¹ To this end, a working group was set up by the relevant Parliamentary Committee and was to include representatives from the Ministry of Agriculture and Environmental Protection.¹²

37. In its final progress report, the Party concerned, reiterates the above statements, namely that it recognizes that certain articles (articles 1, 3, and 16 (2)) of the 2014 Act on

⁶ Committee’s supplementary first progress review, 16 August 2019, para. 65; Committee’s second progress review, 2 March 2020, para. 35.

⁷ Committee’s second progress review, 2 March 2020, para. 36.

⁸ Ibid., para. 37.

⁹ Party concerned’s letter answering the Committee’s questions 7–22, 25 March 2019, p. 1; Party concerned’s letter, 24 December 2019, para. 2.

¹⁰ Party concerned’s letter answering the Committee’s questions 7–22, 25 March 2019, p. 1.

¹¹ Party concerned’s letter, 24 December 2019, para. 2.

¹² Ibid.

Public Associations give rise to contradictions with other provisions of that Act.¹³ The Party concerned states that it will undertake the necessary efforts to coordinate the activities of relevant institutions and organizations to correct the abovementioned provisions of the Law.¹⁴ It further reports that in addition to the Ministry of Agriculture and Environmental Protection, the Parliament of Turkmenistan, the Ministry of Justice and other institutions and organizations will be involved in the process.¹⁵

38. In its final progress report, the Party concerned reports on other amendments and additions which were introduced into the 2014 Act on Public Associations during the Parliament's session on 22 August 2020.¹⁶ The Party concerned states that these amendments are aimed at further improving the activities of public associations. The changes and additions concern:

- (a) The definition of the number of international and national public associations (article 9);
- (b) The clarification of the status of the founders of public associations (article 11);
- (c) The use of public association symbols (articles 19 and 24);
- (d) The expansion of the responsibilities of public associations towards their members (article 24);
- (e) The clarification of certain wording and provisions of the Act.¹⁷

39. With respect to addressing the specific recommendations of the Committee related to article 3 (9) of the Convention, the Party concerned states that the next step on the agenda should be to discuss amendments to the Act on Public Associations, including "the right of foreign citizens and stateless persons to establish and participate in public associations".¹⁸ It further explains that, as a result of the ongoing pandemic, and its negative impact on the functioning of state structures, the necessary legislative, regulatory and other measures proposed by the Committee could not be taken in time to meet the 1 October 2020 deadline.¹⁹

40. In its comments on the Party concerned's final progress report, the communicant of communication ACCC/C/2004/5, stresses that despite recent changes to the legislation of Turkmenistan, article 1 of the 2014 Act on Public Associations still limits the right "to associate in NGOs" only to citizens of Turkmenistan. It submits that the references in articles 4 (1) 7 (1), 8 (3), 11 (1) and (5), 13 (2), to "citizens" or "physical persons" does not mean that these articles qualify as permission to foreigners, and physical persons without citizenship, to participate in the establishment and the activities of NGOs.²⁰

41. The communicant suggests that it would be useful for the Party concerned to provide statistical information on the number of NGOs registered during the past five years and the identity of their founders (Turkmen citizens, foreigners or stateless persons).²¹

42. The Committee takes note of the recognition by the Party concerned that there are contradictions in the 2014 Act on Public Associations as well as its intention to amend that Act to address these contradictions. However, having reviewed the information received, including the amendments to the 2014 Act on Public Associations adopted on 22 August 2020, the Committee notes with regret that none of these amendments address the matters within the scope of request ACCC/M/2017/2.

43. While recognizing the difficulties linked to the ongoing COVID-19 pandemic, the Committee expresses its disappointment that the Party concerned has taken no concrete steps

¹³ Party concerned's final progress report, 21 May 2021, para. 2.

¹⁴ Ibid., para. 3.

¹⁵ Ibid.

¹⁶ Ibid., para. 4.

¹⁷ Ibid.

¹⁸ Ibid., para. 5.

¹⁹ Ibid., para. 6.

²⁰ Communicant's comments on final progress report, 7 May 2021, p. 1.

²¹ Communicant's comments on the Committee's draft report, 5 July 2021.

towards compliance with article 3 (9) since establishing the parliamentary working group in 2019. The Committee in particular regrets that the Party concerned did not use the occasion of the legislative amendments adopted on 22 August 2020 to address its noncompliance with the Convention. The Committee emphasizes the importance of upholding the rights enshrined in the Convention and the need of maintaining a consistent, clear and transparent legal framework, despite the ongoing challenges brought by the pandemic.

44. In light of the foregoing, the Committee finds that, in the absence of a legal framework that clearly ensures that foreign citizens and persons without citizenship are able to participate in and found public associations in the same way as citizens of Turkmenistan, the Party concerned does not yet comply with article 3 (9) of the Convention.

Article 3 (4)

45. The Party concerned has acknowledged that adjustments are needed to address the lack of clarity between article 7 (2) of the 2014 Act on Public Associations and article 9 of the Law on Nature Protection.²²

46. With respect to its compliance with article 3 (4) of the Convention, the Party concerned in its final progress report states that the next step on its agenda includes clarifying article 9 (2) of the Law on Nature Protection to ensure that members of the public coming together to undertake environmental rehabilitation activities or to take part in environmental actions are not considered “unregistered associations” with the result that their activities are prohibited under article 7 (2) of the Act on Public Associations.²³ The Party concerned explains that the ongoing pandemic has negatively affected its ability to take measures to come into compliance with the Convention by 1 October 2020.²⁴

47. The Committee takes note of the Party concerned’s recognition of the need to amend the 2014 Act on Public Associations and the Law on Nature Protection to address the lack of clarity between article 7 (2) of the Act on Public Associations and the Law on Nature Protection. In this regard, the Committee reiterates the importance of ensuring that any measure proposed to address the present lack of clarity makes clear that the exercise of the rights in article 9 (1)–(9) of the Law on Nature Protection would not in themselves amount to an activity of an unregistered association for the purposes of article 7 (2) of the Act on Public Associations.²⁵

48. The Committee also acknowledges the challenges caused by the ongoing pandemic. The Committee however expresses its disappointment that the Party concerned did not use the occasion of the amendments to the Act on Public Associations made by Parliament on 22 August 2020 to address the concerns identified by the Committee regarding article 7 (2) of that Act and that no other concrete steps to address these concerns have yet been taken.

49. In the light of the above, the Committee finds that, given the ongoing lack of clarity as to how the prohibition on activities of unregistered associations set out in article 7 (2) of the 2014 Act on Public Associations is to be applied in practice, the Party concerned has not yet demonstrated that it complies with article 3 (4) of the Convention.

Article 3 (1)

50. In the light of the Committee’s findings in paragraphs 44 and 49 above, the Committee finds that the Party concerned has not yet demonstrated that it complies with the obligation in article 3 (1) of the Convention to provide a clear, transparent and consistent framework to implement the provisions of article 3 (4) and (9) of the Convention.

²² Party concerned’s letter, 24 December 2019, p. 3.

²³ Party concerned’s final progress report, 21 May 2021, para. 5.

²⁴ Ibid., para. 6.

²⁵ Committee’s second progress review, 1 March 2020, para. 31.

IV. Conclusions

51. Based on the foregoing, the Committee finds that:

(a) In the absence of a legal framework that clearly ensures that foreign citizens and persons without citizenship are able to participate in and found public associations in the same way as citizens of Turkmenistan, the Party concerned does not yet comply with article 3 (9) of the Convention;

(b) Given the ongoing lack of clarity as to how the prohibition on activities of unregistered associations set out in article 7 (2) of the 2014 Act on Public Associations is to be applied in practice, the Party concerned has not yet demonstrated that it complies with article 3 (4) of the Convention;

(c) In the light of the Committee's findings in subparagraphs (a) and (b) above, the Committee finds that the Party concerned has not yet demonstrated that it complies with the obligation in article 3 (1) of the Convention to provide a clear, transparent and consistent framework to implement the provisions of article 3 (4) and (9) of the Convention.

52. The Committee recommends to the Meeting of the Parties that it endorses the above findings and requests the Party concerned to take, as a matter of urgency, the necessary legislative, regulatory, administrative and practical measures to ensure that its legal framework:

(a) Explicitly sets out that foreign citizens and persons without citizenship have the same right to found and participate in nongovernmental organizations promoting environmental protection as do citizens of Turkmenistan;

(b) Makes clear that members of the public who decide to come together to exercise their rights under article 9 (2) of the Law on Nature Protection, for example, to undertake environmental rehabilitation activities or to take part in demonstrations on nature protection issues and, in doing so, choose to identify themselves by a common name, will not be considered as acting as an "unregistered public association" and thus have their activities prohibited under article 7, paragraph 2, of the 2014 Act on Public Associations.

53. The Committee further recommends to the Meeting of the Parties that it call upon all relevant ministries of the Party concerned, including the Ministry of Justice, to work together to ensure the successful fulfilment of the above recommendations.

54. The Committee also recommends that the Meeting of the Parties request the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(b) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the above recommendations;

(c) Provide such additional information as the Committee may request in between the above reporting dates in order to assist the Committee to review the progress by the Party concerned in implementing the above recommendations;

(d) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

55. Finally, the Committee recommends that, in light of the lack of engagement and concrete action of the Party concerned during the intersessional period, the Meeting of the Parties issue a caution to the Party concerned to become effective on 1 January 2024, unless the Party concerned has fully satisfied the conditions set out in paragraph 52 (a) and (b) above and has notified the secretariat of this fact by 1 October 2023.

56. The Committee recommends that the Meeting of the Parties request the Committee to establish the successful fulfilment of paragraph 52 (a) and (b) for the purposes of paragraph 55 above.
